U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AURELIOUS ALSTON and U.S. POSTAL SERVICE,
POST OFFICE, Flint, MI

Docket No. 00-1117; Submitted on the Record;
Issued June 12, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further consideration of the merits.

On November 16, 1998 appellant, then a 36-year-old letter carrier, filed an occupational disease claim alleging that his supervisors created a hostile work environment through threats and intimidation, which caused him to suffer from depression, anxiety attacks, high blood pressure, increased blood sugar and headaches. He indicated that he first became aware that his conditions were caused or aggravated by his employment on July 27, 1998. Appellant stopped work on July 29, 1998 and returned part time on November 16, 1998.

On November 23, 1998 the Office received evidence pertaining to the claim. In a letter dated December 16, 1998, the Office informed appellant that it required additional factual and medical evidence. The Office noted that appellant had filed prior emotional condition claims for employment events between June and December 1997, therefore, it requested details of employment events after December 1997 believed to have contributed to his condition.[1]

Appellant submitted a statement dated January 4, 1999, in which he noted that, while delivering mail, he had seen members of the management staff stalking him throughout the day including: Jeff Stebbins, Essie Adams, Hermon Gillum, Sue Potter, Dana, Kim Donche, Vernell Williams, Judy Roy, Gina Mason and Steve Izzo. Appellant stated that he also witnessed these supervisors talking with patrons on his route in an attempt to solicit complaints about his service

[1] Appellant has filed previous emotional condition claims with the Office including a claim which was accepted for an adjustment disorder with mixed moods and aggravation of his preexisting high blood pressure attributed to work factors on June 14, 1997. Four other emotional condition claims filed by appellant have been denied on the grounds that fact of injury had not been established.

and that, as a result, he had filed a grievance.[2] He indicated that, in another incident, his supervisors informed him that he should have been casing 4.25 feet of letters per hour, although the main office was only expected to case 3 feet of letters an hour. Appellant stated that, on several occasions, Gary Perria shouted and used profanity towards him concerning why he had not finished casing mail and that he considered Mr. Perria's actions belittling and hostile. He also stated that he had on occasion informed management when mail volume was high; however, his supervisors replied, "do it in eight or else." Appellant further indicated that management would threaten to write him up if he did not finish delivery within the directed time frame. He also alleged that at other times management had denied him overtime but approved other carriers with the same or similar mail volume. Appellant further indicated that, on occasion when he took leave, his forms were lost or misplaced. He alleged that he had previously heard Mr. Izzo persuade other employees from talking to him in an attempt to isolate him from his coworkers. Appellant stated that, on at least one occasion in February 1998, Mr. Perria, during a service talk with the carriers of the main post office and downtown station, discussed his medical condition in an open forum. He indicated that he filed a grievance and management agreed that his privacy had been violated however, they stated, his confidentiality had already been breached. Appellant further stated that, on another occasion, Mr. Gillum and Mr. Izzo informed a union steward that they did not like him and would diligently attempt to get him fired. He indicated that, shortly after this event, he was issued a letter of warning for absenteeism.

Appellant also submitted a statement dated January 12, 1999 in which he discussed a subsequent work incident that occurred on January 2, 1999 since filing his claim. He stated that, on January 2, 1999, he informed Mr. Gillum that he slipped during his route but was apparently uninjured. Appellant alleged that his supervisor was very aggressive and in an intimidating stance told him to fill out a Form CA-1 and report to the clinic. He stated that he informed Mr. Gillum that he was not injured but simply wanted to report the incident. Appellant indicated that, since their discussion occurred at the end of his shift, he then went home. He stated that, following this event, he received a letter of warning from the employing establishment dated January 5, 1999, which indicated that he failed to submit a CA-1 form and undergo evaluation following his alleged work injury of January 2, 1999 as instructed. Appellant alleged that this action constituted retaliation.

By decision dated March 5, 1999, the Office denied the claim on the grounds that the evidence of record failed to establish that appellant sustained an emotional condition in the performance of duty. On June 15, 1999 appellant requested reconsideration of the March 5, 1999 decision.

By decision dated September 2, 1999, the Office denied appellant's request on the grounds that the evidence submitted was found to be repetitive and of an immaterial nature and insufficient to warrant review of its prior decision.

[2] Appellant also submitted a grievance settlement letter from the Union dated July 7, 1997, which indicated that a resolution had been reached between appellant and the employing establishment that management would not solicit customer complaints and that all carriers would be treated fairly for street supervision. The date of the settlement letter indicates that this incident occurred prior to December 1997, the period in question by the Office.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty after December 1997.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[6]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[7] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[8]

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and an overall hostile work environment. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

---

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[6] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Id.*

Appellant alleged that, on several occasions, Mr. Perria shouted and used profanity towards him concerning why he had not finished casing mail. He alleged that, when mail volume was high, he notified management that he could not deliver his mail in eight hours, however, he was told, "do it in eight or else." Appellant further alleged that supervisors discussed their dislike for him to others, attempted to isolate him from coworkers and indicated that they would diligently attempt to get him fired. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[9] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[10] In the instant case, the record contains no factual evidence corroborating any harassment. As appellant has not provided sufficient evidence that the alleged harassment did, in fact, occur he has not established a compensable employment factor with respect to the alleged harassment and discrimination.

Appellant further alleged that the employing establishment denied overtime, misplaced leave forms, unfairly scorned him regarding his work efficiency, unreasonably monitored his activities while delivering mail and solicited complaints from customers regarding his work. The Board finds that these allegations relate to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[11] Although the handling of disciplinary actions, leave requests and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[12] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[13] Appellant did not, however, submit any evidence to show that the employing establishment committed error or abuse with regard to such administrative matters. He has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[14]

---

[9] *David Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[10] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[11] *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[12] *Id.*

[13] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[14] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[15] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[16]

In the present case, appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office. Neither did he submit relevant and pertinent new evidence not previously considered by the Office. In support of his request for reconsideration, appellant submitted an arbitration decision dated August 16, 1999, which found in favor of appellant regarding a letter of warning to appellant on January 7, 1999 for an incident, which occurred on January 2, 1999 as discussed above. The arbitration decision submitted involved events, which occurred after the claimed period of disability and as the November 16, 1998 claim was not expanded to include the January 2, 1999 incident, the arbitration decision submitted on reconsideration is immaterial on the issue previously decided by the Office. Appellant also submitted a medical report from Dr. Joe Kim, an osteopath, dated February 2, 1999 and treatment notes with illegible signatures. As noted above, the Office properly found that appellant failed to establish a compensable employment factor; therefore, it is premature to address the medical evidence. Consequently, since all of the remaining newly submitted evidence was medical in nature, the Office properly determined that this new evidence did not constitute a basis for reopening the case.[17]

As appellant's June 15, 1999 reconsideration request did not meet at least one of the three requirements for obtaining a merit review under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying the request.

[15] 20 C.F.R. § 10.606(b)(2) (1999).

[16] 20 C.F.R. § 10.608(b) (1999).

[17] *See Alton L. Vann*, 48 ECAB 259, 269 (1996) (evidence that does not address the particular issue involved does not constitute a basis for reopening a case).

The decisions of the Office of Workers' Compensation Programs dated September 2 and March 5, 1999 are hereby affirmed.

Dated, Washington, DC
June 12, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member